HUSBAND AND WIFE: COMPETITION BETWEEN LAWFUL AND "DE FACTO" WIVES IN COMMUNITY PROPERTY—What are the respective rights of a bigamist's "wives" in the community property? *Dahne v. Dahne*[1] suggests the unique situation in which the lawful wife and the putative, or *"de facto,"* wife of a bigamist simultaneously seek to enforce marital property rights. In this case, however, the question is raised only incidentally and its answer accordingly is left to speculation.

Schneider v. Schneider,[2] which introduced the putative marriage doctrine into California law, gave rights in the "community property" of the void second union to a woman who had committed bigamy—although innocently—by marrying a second time while the first marriage remained undissolved. The justice of this result is clear and the viewpoint of the court in protecting the woman is admittedly an enlightened one. However, suppose this situation to be reversed, with the man possessed of two spouses, and we find a problem complicated by the already existing rights of the lawful wife in the community property.[3]

The early Louisiana cases,[4] which furnish direct authority on the point, saw no overwhelming obstacle in this situation, however, and adopted without modification the Spanish rule of the putative marriage, which in this instance divides between the "wives" the community property acquired during the putative union to the complete exclusion of the husband and his successors. This view is sustained upon the theory that the husband by his conduct forfeited his community property rights in such of the community property as was acquired during the putative marriage, and such forfeiture was held to create a debt upon his succession in favor of the putative wife. The possibility of good faith on the part of the man as a factor which might alter the rule does not seem to have been suggested in these early cases.[5]

Since the doctrine of the putative marriage has come into California through indirection and not as a direct heritage of early

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[1] (Oct. 7, 1920) 33 Cal. App. Dec. 313, 193 Pac. 785. Rehearing denied by the supreme court, Dec. 6, 1920.

[2] (1920) 60 Cal. Dec. 94, 191 Pac. 533, commented upon in 9 California Law Review, 68.

[3] Cal. Civ. Code §§ 162-164. The scope of this note cannot include a discussion of other interesting complexities which may arise out of the putative marriage doctrine. For a general discussion of the doctrine see note cited supra, n. 2, also note, 5 Minnesota Law Review, 149.

[4] Patton v. Philadelphia (1846) 1 La. Ann. 98; Hubbell v. Inkstein (1852) 7 La. Ann. 252; Abston v. Abston (1860) 15 La. Ann. 137.

[5] Later cases in Louisiana have upheld the rule. Smith v. Smith (1891) 43 La. Ann. 1140, 10 So. 248; Waterhouse v. Star Land Co. (1916) 139 La. 177, 71 So. 358. See, however, Jerman v. Tenneas (1892) 44 La. Ann. 620, 11 So. 80; Vaughn v. Dalton Laird Co. (1907) 119 La. 61, 43 So. 926; also the Texas case of Ft. Worth etc. Ry. Co. v. Robertson (1910) 103 Tex. 504, 121 S. W. 202, 131 S. W. 400, Ann Cas. 1913A 231.

Spanish jurisprudence,[6] it is clear that courts of this state will not be bound by precedent in their solution of problems which may arise under it.

Upon principle it would seem that the putative wife is entitled to some part of the common property of the void union under all circumstances—assuming, of course, that the essential requisite of a putative marriage, namely, good faith, is present. Whether or not the court should go to the full extent of the Louisiana doctrine and divide the community property acquired during the putative marriage between the two women would depend upon the facts of the particular case. While it may be said that there are no equities in an heir, a situation in which such a division of the property would be an extremely harsh result can easily be imagined. For instance, to allow a lawful wife who had not obtained a valid decree of divorce but had again married and was the *"de facto"* wife of another, to assert claims in the common property held by her first husband to the exclusion of heirs or a putative wife of such husband would be to reach a result justifiable in logic, perhaps, but not otherwise.

In the last analysis the whole doctrine, it is submitted, is one based upon equitable considerations and, being based upon equitable considerations, it should be applied only with a view towards effecting substantial justice among the parties involved. Parties without standing in equity should be precluded upon equitable principles from asserting claims in the property in controversy until the rights of innocent parties have been fully taken care of. *W. C. B.*

MUNICIPAL CORPORATIONS: RELATIVE SUPERIORITY OF SUCCESSIVE LIENS FOR STREET IMPROVEMENTS—In California cities expand rapidly. It is a common experience to witness, within a comparatively short time, the growth of a well-settled community in what was an orchard or wheat field. If, during the course of one of these characteristic transformations, successive contractors grade the streets, set the curbs, lay down sewers, pave the streets, construct cement sidewalks, plant trees, and erect elaborate electroliers, the common conceptions of business relations and property law would seem to indicate that these improvements should be paid for in the order of their initiation or completion; but the supreme and appellate courts have held that the liens of such contractors

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[6] See 9 California Law Review, 71. The doctrine of the putative marriage does not depend entirely upon its recognition by the Code Napoleon for its historical basis but is found in the canon law not earlier, however, than the twelfth century: Planiol, Traité Elémen. de Droit Civil (8th ed. 1920) § 1094. The dictum in the principal case that plaintiff "acquired no marital rights" is not, it is submitted, authority contra to the doctrine of Schneider v. Schneider (supra, n. 2).